



Neutral Citation Number: [2025] EWHC 1172 (Fam)

Case No: FD25P00065

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

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Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/05/2025

**Before :**

**THE HONOURABLE MRS JUSTICE JUDD**

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**Between :**

**D**

**Applicant**

**- and -**

**E**

**Respondent**

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**Mani Singh Basi** (instructed by **Dawson Cornwell LLP**) for the **Applicant**  
**Charlotte Baker** (instructed by **Oliver Fisher Solicitors**) for the **Respondent**

Hearing dates: 8<sup>th</sup> May 2025

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 15<sup>th</sup> May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE JUDD

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

## **Mrs Justice Judd :**

### Introduction

1. This is an application under the 1980 Hague Convention by a father for his daughter, O, who will be three later this year, to be returned to the Kingdom of Spain. The application is opposed by the mother. She accepts that her removal of O was wrongful within the meaning of Article 3 of the Convention but defends the application on the grounds of Article 13b, namely that there is a grave risk that a return would expose O to physical or psychological harm, or place her in an intolerable situation.

### Brief Background

2. The father was born in South America and the mother in England. They each moved to Spain in the early 2000s and began their relationship in 2018 when the mother was still a teenager. The father is 15 years older than her. O was born in Spain.
3. The mother was adopted when she was young after being severely neglected within her birth family. She suffered instability when she was in foster care, and then further trauma when placed with her adoptive family when one of her adopted siblings became ill and died. The mother suffered from some mental ill-health in 2018 and 2019 when she self harmed, and was referred to a Consultant Psychiatrist for advice and treatment.
4. The relationship ended between the parents in late 2024. The mother moved back to live with her parents who also live in Spain, but after a short time, and without telling the father, she moved back to the UK with O, where she remains.

### The hearing

5. I have read all the documents in the main and supplementary bundles, which includes statements not only from the parties but also from the mother's parents. A late statement was filed alleging that the father had issued threats to the mother's parents, something that is strongly rejected by the father (who filed evidence from a third party in relation to this as well as himself). I have also read reports of the Spanish social services, the expert report of Dr. Van Velsen, the safeguarding report of Ms. Demery, various exhibits and attachments to the parties' statements, and photographs of one of the caravans. I have read the very helpful skeletons of both Mr. Basi for the father and Ms. Baker for the mother, and listened to oral submissions from them.

### The evidence

6. The evidence filed by, and on behalf of, the parents is more detailed than would normally be the case in summary proceedings, but it is important to understand the background to the case as presented by the mother and her family.
7. According to a statement from the maternal grandparents, the mother had a very difficult start in life, having been removed from her birth parents as a result of serious neglect. She was placed in foster care and then adopted with her brother when she was four years old. The move from foster care to their home was not easy for her. The family then suffered further trauma when one of the other children they had adopted (the mother's brother by adoption) became suddenly very ill. He was hospitalised for

six months and then died. The adoptive mother spent all of her time with him and the father had to take over in the home, putting his business on hold. This meant that until she was five, the mother's life was characterised by neglect, instability and loss.

8. Following the death of the mother's sibling, the family moved to Spain to try and start a new life. After that, the mother's life is said to have been happy and uneventful but things became more difficult when she became an older teenager. She left home after finishing school and almost immediately met and commenced a relationship with the father who she met when she was working in a bar. She was 19 and he was 35.
9. There is no dispute that they both were involved in drug taking and moved home frequently during the relationship. In 2019 there were problems in the relationship and the mother self-harmed and was seen by mental health services. (It should be noted that there had been a similar episode of self-harm by the mother in 2018, before the start of the relationship.)
10. In her statement, the mother says that the father was abusive and controlling of her from the beginning of the relationship. She says that he isolated her from her family, that he could not sustain a job and that he spent his money on drugs and alcohol. She says he introduced her to drugs as well. He did not hit her but he would frequently lose his temper and shout at her, push her and throw furniture about. She said she was very frightened of him. She said that the harm she did to herself in 2019 came about because she felt totally controlled and undermined.
11. When O was born, she was very ill and required extensive surgery for a life-threatening condition. At the time she was discharged from hospital the parents were living in a caravan on what the mother describes as a 'bit of scrap land'. She has provided photographs of this. Social services became involved. There is a report from the Department of Social Welfare which states that the caravan smelt very strongly of the large dog that the parents owned, and that the father appeared to be semi-conscious on the bed, unable to speak or open his eyes. The property was said not to meet the minimum standard of hygiene and fitness for habitation of the baby, and the social worker considered that the baby was at risk. A few days later the social workers returned. On that visit they describe the father as being very aggressive and agitated, threatening the staff and not allowing the mother to speak. He was said to be very rigid in his ideas and failed to see how serious the situation was. He did not want to leave the caravan and demanded to be given a house.
12. The mother told social services that she had a very bad relationship with her parents and that she had recently discovered she was adopted. She said that she was frightened of history repeating itself and wanted to keep her daughter. Both parents were said to show the baby affection.
13. The parents then left the caravan and went to live in a room in the house of the father's aunt. Social services visited regularly and the state of the property was said to be good. The parents' engagement was said to be intermittent, and there was considerable concern about the instability in their lives, as neither of them had a job and could not keep a stable home.
14. In June 2024, the family moved to live in another caravan and were warned that the living conditions were unsuitable for O. The parents moved yet again.

15. The relationship ended in November 2024 when the mother left, taking O with her. She went to live with her parents. The social worker reported that when she saw the mother there, she accepted for the first time that she and the father had not been open and transparent when dealing with professionals in the past.
16. The report concludes by saying that the department wished to highlight the instability at every level demonstrated by the parents. The mother was said to be a person with a complex history who would need serious therapeutic work to overcome her vulnerabilities. The possibility of access to housing in the area was almost non-existent.
17. The mother and O stayed with her parents for a few weeks, but she said she began to fear that the father would abduct O from her. She said he began to appear at her nursery unannounced, having never done so before, and threatened to come to her parents' house. She commenced proceedings in Spain but says that she was told by her Spanish lawyers that once she had filed for proceedings there was nothing to stop her leaving the country. She left without telling the father, and came to this country in January 2025. With the help of her parents she obtained the lease of a flat where she is living with one of her adopted siblings. She is working as an auxiliary nurse on a zero hours contract. The safeguarding report from Ms. Demery, which has been filed within these proceedings, states that there are no safeguarding concerns about her care of O.
18. In her statement, the mother says that she takes full responsibility for staying with the father for too long and the harmful effect this had upon O. She says she is determined to make changes in her life to be the best mother she can.
19. The father strongly denies the mother's allegations. He says that the mother's parents were hostile to him from the beginning and that the relationship broke down because the mother was having an affair. He states he did not pursue her and accepted that she had brought the relationship to an end. He has provided evidence of messages which passed between them demonstrating that he was simply concerned to see O. He points out that he has an older daughter with whom he has a very good relationship and with her mother too and has filed evidence from them supporting his case. He states that he became concerned that the mother was cutting off communication with him and that she would abduct O, a fear that turned out to be correct.
20. He denies the allegations made by the Spanish social services and the social worker, stating that he was suffering from severe gastroenteritis when they first visited. He says that he has been systemically discriminated against. He is now working full time for Amazon and is living with his older daughter and her mother, and states that he is stable and in a position to offer good care for O. When speaking to Ms. Demery, he said that the mother 'did not have a clue' how to raise O and that she and her parents had built a case against him which was based on untruths.
21. Shortly before the hearing, the mother filed a statement saying that she believed the father had threatened her own parents. The father filed evidence denying this, stating that he believed that something said by one of his friends (whose statement to the police he also filed) was deliberately misconstrued.

22. The grandparents said in their statement that it would not be possible or practical for the mother and O to move in with them if a return order was made.
23. The father has offered to pay for the mother and O's flights to Spain and that he will not attend the airport when they arrive. He offers money to enable the mother and O to support themselves upon their arrival in Spain. He has offered to pay 2,300 Euros for the first three months, divided into two payments, one to be paid before departure to Spain and the other on arrival. He will do this by taking out a loan. The money he has offered ought to be sufficient for the mother to pay rent for about 3 months, assuming she is able to find something comparable to the father's own accommodation.
24. He also offers undertakings on the usual terms as to non-molestation and not to contact the mother or her parents. He accepts that he will not seek to find out where the mother is living, and will add O as a dependent upon his health care plan. He offers to withdraw his criminal complaint against the mother and not to initiate any proceedings with respect to the unlawful removal and not to remove O from the mother's care until the matter is resolved by the Spanish courts.

#### Expert evidence

25. Dr. Van Velsen was instructed in the proceedings to provide an assessment of the mother's mental health and the impact of returning to Spain on her ability to parent O. She reviewed the mother's medical records and the documents filed with the court. She also interviewed the mother.
26. She states that the mother has a history of anxiety, low mood, self-harm, and suicidal thoughts, particularly linked to her turbulent relationship with the father. Currently the mother feels more stable and happier since ending the relationship. She has nightmares about past arguments but no current suicidal thoughts or symptoms of major mental illness.
27. In her opinion the mother has borderline traits, including emotional lability, self-harm, suicidal thoughts, relationship turbulence, and dependency. She does not have any major disorder at present. Returning to Spain would likely destabilize her mental health, leading to mood lability, self-harm, suicidal thoughts, and depression, which would impact upon her ability to care for O. Supportive psychotherapy and parenting help would benefit O, and creating a stable and routine environment similar to her current situation in the UK is crucial for her mental health and parenting ability.

#### Legal Framework

28. I am indebted to counsel for the summary that each of them has provided in their respective skeleton arguments as to the legal framework. Given the specific issues in this case I have been particularly assisted by their references not only to the overarching general principles in the 1980 (and 1996) Convention and the major cases, but also to cases where considerations of fact which are, or may be, relevant to the situation here. Although I will not repeat it all here, I have read the submissions and the cases themselves which have been hyperlinked within the written documents, with care.

29. Article 1 of the 1980 Hague Convention sets out the purpose of the Convention:

*“To protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access”.*

30. The underlying philosophy is that the wrongful removal or retention of a child is prejudicial to his or her welfare, and that save for the limited exceptions provided for, it will be in their best interests to return to the state of habitual residence, and for the courts of that state to determine the merits of a dispute as to their future arrangements. In B v B [2014] EWHC 1804, Mostyn J described the specific purpose and limited operation of the Convention, stating that there are very few exceptions, and the exceptions that do exist have to be interpreted very narrowly in order that the central premise of the Convention is not fatally undermined. He stated:

*“All the Convention provides is that the child should be returned for the specific purpose and limited period to enable the court of her homeland to decide on her long-term future. That is all it decides”.*

31. The Guide to Good Practice makes the same point in paragraphs 25 to 28. Further, Article 7 of the 1996 Hague Convention provides that the courts of the United Kingdom are prohibited from engaging in any substantive examination of the welfare of the child until either of the conditions precedent under Article 7(1)(a) or (b) are met.

#### Article 13b

32. The provisions of Article 13b have been considered in numerous cases. In Re IG (Child Abduction: Habitual Residence: Article 13b) [2021] EWCA Civ 1123, Baker LJ stated at paragraphs 46 to 48:

*“46. The leading authorities remain the decisions of the Supreme Court in Re E (Children) (Abduction: Custody Appeal) [2011] UKSC 27, [2012] 1 AC 144 and Re S (A Child) (Abduction: Rights of Custody)[2012] UKSC 10, [2012] 2 AC 257. The principles set out in those decisions have been considered by this Court in a number of authorities, notably Re P (A Child) (Abduction: Consideration of Evidence)[2017] EWCA 1677, [2018] 4 WLR 16 and Re C (Children) (Abduction: Article 13(b)) [2018] EWCA Civ 2834, [2019] 1 FLR 1045. Since the hearing of the present appeal, this Court has handed down judgments in another appeal involving Article 13(b), Re A (A Child) Article 13(b) [2021] EWCA Civ 939 in which Moylan LJ carried out a further analysis of the case law. I do not intend to add to the extensive jurisprudence on this topic in this judgment, but merely seek to identify the principles derived from the case law which are relevant to the present appeal.*

47. *The relevant principles are, in summary, as follows.*

*(1) The terms of Article 13(b) are by their very nature restricted in their scope. The defence has a high threshold, demonstrated by the use of the words "grave" and "intolerable".*

*(2) The focus is on the child. The issue is the risk to the child in the event of his or her return.*

*(3) The separation of the child from the abducting parent can establish the required grave risk.*

*(4) When the allegations on which the abducting parent relies to establish grave risk are disputed, the court should first establish whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then establish how the child can be protected from the risk.*

*(5) In assessing these matters, the court must be mindful of the limitations involved in the summary nature of the Hague process. It will rarely be appropriate to hear oral evidence of the allegations made under Article 13(b) and so neither the allegations nor their rebuttal are usually tested in cross-examination.*

*(6) That does not mean, however, that no evaluative assessment of the allegations should be undertaken by the court. The court must examine in concrete terms the situation in which the child would be on return. In analysing whether the allegations are of sufficient detail and substance to give rise to the grave risk, the judge will have to consider whether the evidence enables him or her confidently to discount the possibility that they do.*

*(7) If the judge concludes that the allegations would potentially establish the existence of an Article 13(b) risk, he or she must then carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to the risk.*

*(8) In many cases, sufficient protection will be afforded by extracting undertakings from the applicant as to the conditions in which the child will live when he returns and by relying on the courts of the requesting State to protect him once he is there.*

*(9) In deciding what weight can be placed on undertakings, the court has to take into account the extent to which they*

*are likely to be effective, both in terms of compliance and in terms of the consequences, including remedies for enforcement in the requesting State, in the absence of compliance.*

*(10) As has been made clear by the Practice Guidance on "Case Management and Mediation of International Child Abduction Proceedings" issued by the President of the Family Division on 13 March 2018, the question of specific protective measures must be addressed at the earliest opportunity, including by obtaining information as to the protective measures that are available, or could be put in place, to meet the alleged identified risks.*

48. In his judgment in the recent case of *Re A*, Moylan LJ (at paragraph 97) gave this warning about the failure to follow the approach set out above in paragraph (4):

*"if the court does not follow the approach referred to above, it would create the inevitable prospect of the court's evaluation falling between two stools. The court's "process of reasoning", to adopt the expression used by Lord Wilson in *Re S*, at [22], would not include either (a) considering the risks to the child or children if the allegations were true; nor (b) confidently discounting the possibility that the allegations gave rise to an Article 13(b) risk. The court would, rather, by adopting something of a middle course, be likely to be distracted from considering the second element of the *Re E* approach, namely "how the child can be protected against the risk" which the allegations, if true, would potentially establish."*

33. Paragraph 40 of the Guide to Good Practice states as follows:-

- i) As a first step the court should consider whether the assertions are of such a nature, and of sufficient detail and substance, that they could constitute a grave risk;
- ii) If it proceeds to the second step, the court determines whether it is satisfied the grave risk exception to the child's return has been established by examining and evaluating the evidence presented by the person opposing the child's return, and by taking into account the evidence pertaining to protective measures available in the state of habitual residence.

#### Protective Measures

34. The assessment of protective measures was considered in *Re E* above, paragraphs 35 to 37, and more recently in *Re T (Abduction: Protective Measures: Agreement to Return)* [2023] EWCA Civ 1415. To be protective, measures need to be effective.

35. In *G v D (Article 13(b) Absence of Protective Measures* [2021] 1 FLR 36, MacDonald J emphasised that it is well-established that the courts should accept that, unless the contrary is proved, the administrative, judicial and social service authorities of the requesting State are equally as adept in protecting children as they are in the requested State.
36. Both Spain and the United Kingdom are contracting parties to the 1996 Hague Convention, meaning that orders or undertakings (unless they relate to financial provision) are recognised by operation of law to safeguard the child upon return by virtue of Articles 11 and 23. In a case where there is a risk of harm under Article 13 of the 1980 Convention measures can therefore be ordered here to guard against it.

Submissions on behalf of the mother

37. On behalf of the mother, Ms. Baker submits that this case is different from the norm under the Hague Convention where a child is removed from a stable environment. O did not live in a stable environment before she left but does so now in England. The mother is employed and studying for a care qualification. O attends nursery and has her own room for the first time. Their life in England is calmer and more structured than it was in Spain.
38. Ms. Baker pointed out the instability of the life that the parents and O had had in Spain. They frequently moved accommodation. They lived in a caravan twice where the conditions were poor, as noted by the Spanish social services, leading them to be told that they should move or risk O being taken into care. She is particularly vulnerable having been born with a severe and life-threatening condition, requiring immediate surgery.
39. The mother stated that her relationship with the father was characterized by domestic abuse, coercive control, and manipulation. She felt isolated from her family and exploited by the father. During the course of the relationship, the family struggled financially, often relying on food banks and vouchers. The father rarely worked, and when he did, his money was spent on alcohol and drugs. There is support for the mother's allegations from the social services reports.
40. Before she left Spain, the mother said she sought legal advice and was told she could leave Spain once she had made her application for custody and relocation to the Spanish Court. She left for England on December 11, 2024, believing she was allowed to travel to protect herself and her daughter.
41. Ms. Baker emphasised the significance of the mother's mental health vulnerabilities and the contents of Dr. Van Velsen's report.
42. She further submits that the father's proposed protective measures are insufficient in that he offers only limited support for a short duration (3 months). The mother faces structural challenges in Spain, including a lack of housing, an inability to drive, no access to state benefits for at least a year unless she lives independently. She points out that the court must consider more than short term protective needs, not just immediate arrangements. This father does not have a good track record so far as paying bills or employment is concerned. The ability of any court to order maintenance is limited by the means of the person who is being asked to pay.

43. The mother fears she may fall back under the father's control, a concern echoed by Spanish social services in 2023 and 2024. A suspicious letter from the father's daughter and her mother appears orchestrated, raising concerns about the father's influence over others and his ability to manipulate narratives against the mother. Harmful effects of domestic abuse include victims being too afraid to prioritise the child's needs, and living in an atmosphere of fear which undermines a child's welfare.
44. Ms. Baker submits that the father has given inconsistent and potentially dishonest accounts of his criminal record and that the mother believes his record is more extensive, but further verification is unlikely due to procedural limitations.
45. On behalf of the mother, Ms. Baker asks the court to dismiss the father's application for O's return to Spain or, in the alternative, to delay any return until after a Spanish court decision on interim leave to remove, expected in mid-June. In her oral submissions, Ms. Baker stated, however, that the court should not rely on the Spanish court making a decision on interim relocation then, as it was not clear what the ambit of the hearing listed on 17<sup>th</sup> June would be.

Submissions on behalf of the father

46. In response to the mother's case, Mr. Basi on behalf of the father does not seek to argue that O should be returned to Spain without the mother. He emphasises that O was born in Spain and had spent her whole life there until the wrongful removal. She attended nursery and had the benefit of friends and extensive family. Although he acknowledges that this court is not determining disputed issues of fact he sets out the father's responses to some key points, for example that he always had a valid residence permit in Spain and expects to be eligible for citizenship in 2026.
47. The father acknowledges his past drug use but also points out that the mother used drugs also. He emphasizes that both have made changes in their lives, particularly after O's birth. The father addresses the allegation that he has a criminal history in his statement, providing evidence and certificates to show he does not pose a risk to the mother or O. He has fully engaged with legal processes both in England and Spain. The father's eldest daughter, who is 12 years old, lives with him and has a strong relationship with O. He co-parents with the mother of his older child and complies with maintenance obligations as per a Spanish court order.
48. Mr. Basi submits that the father has demonstrated his commitment to his children through his actions. He has pursued the return of O in both jurisdictions and has been cooperative during the proceedings, for example by agreeing readily to the Part 25 application for an expert report, and to applications for further evidence to be submitted, including very recent evidence.
49. The father argues that a number of the mother's allegations, including those related to his criminal history and the risks he is said to pose to her and O will all be challenged within substantive proceedings in Spain.
50. Mr. Basi points out that Spain has robust protective measures in place to ensure the safety and well-being of the mother and O. These measures, save in respect of financial commitments, include legal protections, social services support, and the involvement of Spanish authorities. Spain is a signatory to the 1996 Hague

Convention, which reinforces the protective measures available. The court can establish specific protective measures, whether by making orders or accepting undertakings, to safeguard O upon return. These measures will be recognized by operation of law in Spain and can be declared enforceable at the request of any interested party.

51. The Spanish social services are aware of the family's situation and are prepared to offer necessary support. The mother and O will not return to the same situation as before. The mother's adopted parents, who live in Spain, have previously assisted her and are likely to continue offering support. The father emphasizes the importance of their support for both the mother's and O's well-being. He is committed to providing financial support, including a monthly maintenance payment. O's health needs were met in Spain and there is no reason at all to believe that this will not continue to be the case.
52. In dealing with the mother's mental health, Mr. Basi points out that the mother self-reports that her mood is stable, she is in a routine, and has no suicidal thoughts at present. This indicates that she is currently managing her mental health well. Her worries about returning to Spain revolve around falling into "the bubble", which refers to her previous turbulent circumstances, rather than any direct impact on her parenting. This suggests that her primary concern is the environment rather than her ability to care for O. Dr. Van Velsen's report demonstrates that there is no evidence of major mental disorders such as major depressive disorder or schizophrenia and no demonstration of symptoms of an emotionally unstable or borderline personality disorder.
53. The mother's underlying personality difficulties emerged in the context of estrangement from her parents, a turbulent relationship, some drug use, and lack of social stability. These factors contributed to her mental health challenges. Those circumstances have now improved in that the mother has resolved her drug use. She has the support of social services in Spain, which are aware of the family's situation and are prepared to offer necessary assistance. This support is crucial in ensuring her mental health remains stable. The mother's adopted parents, who live in Spain, have previously assisted her and are likely to continue offering support. Their involvement is vital for both the mother's and O's well-being. O's health is now much better.
54. Mr. Basi submits that the protective measures and support available in Spain are sufficient to ensure that the mother's mental health will not deteriorate upon return. He emphasizes that the Spanish authorities are capable of protecting the mother and O and considering any disputed allegations. It was wrong for the mother to say that the sums of money offered by him by way of support were insufficient because she herself had only sought 250 Euros a month in the application she had made to the court in Spain.

#### My decision

55. Mr. Basi was right to emphasise the importance of the underlying purpose of the Convention in cases of child abduction, especially in a case where a child is removed without the other parent being told anything at all about it. The words of Article 13b demonstrate the high threshold that has to be met in order for the defence to be made out.

56. Having said this, I am clear that the allegations made by the mother against the father are of sufficient detail and substance **to give rise to a grave risk** within the meaning of Article 13b. In her statement she has set out an account of domestic abuse in the form of controlling behaviour and aggression over many years which, she says, meant she felt unable to assert herself and leave him to provide safe care for O. There is third party evidence from social services that corroborates this (although I recognise of course that it is strongly challenged by the father) and that O's health and welfare was being put at risk by the poor home environment.
57. I recognise that O would not be going back into the same environment if a return order was made, but if the mother's evidence is true, as a vulnerable person, a return order could seriously undermine the stability she has currently managed to achieve by putting her into a situation where she feels insecure and anxious. Her care of O has been compromised in the past and it could be so again.
58. I must, therefore, turn to the question of protective measures that could be put in place to assess whether those would be sufficient to ameliorate the risk in this case.
59. In the first instance, I entirely accept that the authorities in Spain are as effective as any authorities here in providing protection to victims of domestic abuse and to children too and that the provisions of the 1996 Convention allow orders and undertakings to be enforced there. I have no doubt of the court's power to enforce the non-financial undertakings that are offered by the father so far as they relate to the mother and O (and the mother's parents).
60. The mother's parents have a four bedroomed house in which they could undoubtedly put up the mother and O for a while. They have filed statements explaining why it would not be suitable for the mother and O to live there, but it is profoundly unlikely that they would not put a roof over their heads if that was really necessary. They wish to sell and downsize, and have put their house on the market. They are not wealthy people but they have been helping the mother with legal fees and lending her the deposit for her flat.
61. If the mother and O were to go to her parents' house they would have their basic needs met for housing and food, even if the father was not able to keep paying maintenance.
62. Nonetheless the mother has not spent much time living with her parents since she was 18. Their wish to move, the lack of transport, isolation and the difficulties that brings means this option is only suitable for the very short term.
63. I am sure that O's medical needs would be met as well as they would here, and that the authorities (whether these be from child protection or domestic abuse agencies or both) would step in if they were needed. Equally, the mother's parents would do everything in their power to support the mother, whether she is living with them or not.
64. On the other hand, the support of the mother's parents in the past was not sufficient to protect O. They obviously believe that she and O should be in England and are supporting her to do this.

65. If a return order is made, the mother will have to find accommodation for herself and O before very long. Even if she is able to find something with the money provided by the father in accordance with his undertakings, the evidence suggests he is not generally a reliable source of financial support. Assuming the Spanish authorities become involved very quickly (as it appears they will), no court can order someone to pay maintenance from money they do not have and the mother may not be eligible for benefits for many months especially if she cannot work and live independently. These issues are ones which could cause the mother very significant anxiety and stress.
66. The mother told Dr. Van Velsen: 'I am just worried that if I did return, I would give up and perhaps fall into his bubble again'. Domestic abuse of the sort described, if it is true, has a long reach, and it is well known how vulnerable victims either return to those who abuse them or continue to live in fear despite being offered support. The risk that the mother could come into the orbit of the father again or return to her previous lifestyle in Spain has to be taken very seriously.
67. Dr. Van Velsen's evidence is stark. Although she is currently well, the mother is very vulnerable. She is sensitive to external circumstances so that a further disruption, namely leaving her job, family accommodation and support behind, to go to Spain, where she does not know where or how she could live would be destabilising for her mental health, leading to the development of mood lability, self harm, suicidal thoughts and possible depression. Her underlying personality vulnerabilities could be stimulated, and that this would have an impact on O.
68. The problem in this case is that despite the wealth of protective measures, they can only go so far. None of them can be effective to prevent O suffering (potentially serious) psychological harm or being placed in an intolerable situation if the mother is not stable and well herself. In my judgement, an order that O should return to Spain would risk jeopardising the mother's recently established equilibrium which could in turn trigger the symptoms Dr. Van Velsen describes. Should that happen, the risk to O is grave and obvious.
69. In saying this, I also recognise that there is a risk that the mother's situation here will not remain stable. She has only been here for four months, and is away from all that is familiar to her. Her relationships with members of her birth family may or may not work out. Nonetheless, the evidence suggests that she has been able to settle down with O well, and to work and provide for her so that there are no current concerns about the care she is providing.
70. In all the circumstances, I find that the mother has made out the defence under Article 13b and that there is a grave risk an order for O's return would expose her to physical or psychological harm or otherwise place her in an intolerable situation. I am not prepared to sanction this and accordingly exercise my discretion and refuse to order a return for all the reasons I have set out above.
71. I wish to make it clear that I have made this decision within the context of summary proceedings pursuant to the 1980 Convention. The evidence has not been tested before me and I have made no findings of fact. There are proceedings before the Spanish court, and a hearing listed on 17<sup>th</sup> June. The fact that I have not ordered that O should return pursuant to the Convention does not mean that the Spanish courts

cannot exercise jurisdiction to make welfare decisions about O should they see fit, and nothing I have said in this judgment is intended to discourage them from doing so.